



November 2, 1999

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR99-3093

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128541.

The Texas Department of Criminal Justice (the "department") received a request for the minutes from the Director's Review Committee meeting held July 7, 1999. The requestor also seeks all information pertaining to the two disruptive incidents which allegedly occurred during a visit with her husband. You state that documents responsive to the first part of the request do not exist. You claim, however, that documents responsive to the second part of the request are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample information.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

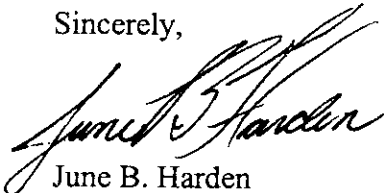
applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

You argue that the requested information is related to a pending lawsuit. You have submitted a copy of the petition showing that litigation is pending and have also demonstrated that the requested information relates to the pending litigation for the purposes of section 552.103(a). *Texas Legal Found.*, 958 S.W.2d at 483. Thus, to the extent it exists, you may withhold the requested information from disclosure pursuant to section 552.103(a).

We note, however, that the opposing party to the litigation has had access to one of the submitted documents. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information, and it must be released. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that section 552.103(a) no longer applies once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 128541

Encl. Submitted documents

cc: Ms. Susan Banks
700 Powderhorn Drive
Athens, Texas 75751
(w/o enclosures)